

**Amendments to the Drawings:**

The attached sheets of drawings includes no changes to any of Figs. 1-10, but the attached sheets of drawing do not include Figs. 11-13. Figs. 11-13 were inadvertently included with the filing of the present application. Thus, the enclosed sheets of formal drawings should replace the sheets of formal drawings originally filed with the present patent application.

Attachment: Replacement Sheets

**REMARKS/ARGUMENTS**

The present amendment amends claims 19-21, 53 and 54. Claims 1-11 were previously canceled. Claims 56-60 are added by the present amendment. Following entry of this amendment claim 11-60 are pending in this application.

The 10/4/04 Office Action objected to claims 19-21 and 53-55 as being dependent upon rejected base claim, but indicated that such claims would be allowable if rewritten in independent form. The present amendment, amends these claims so that they are no longer dependent on the rejected based claims. Thus, it is respectfully submitted that these claims are now in condition for allowance.

The 10/4/04 Office Action rejected claims 11-18 and 22-52 under 35 USC §102(e) as being anticipated by Anderson et al. U.S. Patent No. 5,735,844 (the '844 patent). These rejections are respectfully traversed.

**The '844 Patent**

In connection with the rejections based on the '844 patent, the Office Action appears to rely in large part of Fig. 10B of the '844 patent. It is respectfully submitted that the system shown in Fig. 10B of the '844 patent is very different than the system, or method, recited in the pending claims.

Column 14: line 51 to Column 15: line 17 of the '844 patent includes discussion of the device shown in Fig. 10B of the '844 patent. Based on the teaching of the '844 patent it appears that element 110 of Fig. 10B is a slot into which skin is drawn. A vacuum or suction is suggested as a means for drawing skin into the slot. In the '844 Patent, lenses are provided on the lateral sides of the slot and energy is then transmitted through the lenses. Cooling water can be flowed over the surface of the lenses. See e.g. '844 Patent, col. 14, lines 62-64.

It is respectfully suggested that this teaching of the '844 patent is very different than the device recited in the pending claims of the present application.

**Pending Independent Claim 11**

Pending independent claim 11 recites a device having:

a body having a first planar surface which is placed against a patient's skin, the first planar surface includes a first area, and includes a second area which defines an aperture adjacent the first area;

a cooling element disposed in the body, said cooling element operating to cool the first area; and

a radiation source disposed in the body, the radiation source positioned to emit radiation through the aperture, whereby radiation energy is applied to the patient's skin.

It is respectfully submitted that Fig. 10B of the '844 patent is very different than the device of claim 11. Among other things, the '844 Patent does not appear to disclose a planar surface which has two areas: one area which has a cooling element, and a second area adjacent to the first area which defines an aperture through which radiation is applied to the skin. The slot structure of Fig. 10B of the '844 patent shows that the slot structure does not have a planar surface with two areas –where one area provides cooling, and a second area provides an aperture which is positioned to emit radiation. Indeed, the '844 patent shows the slot as a generally U shaped element, and that the lens which transmits radiation appears to be cooled, to apply cooling the skin which is drawn into the slot, which is very different than the device recited by claim 11.

Thus, it is respectfully submitted that claim 11 and its dependent claims are not disclosed, or suggested by, the '844 patent.

### Pending Independent Claim 23

Pending independent claim 23 recites a method including:

determining a diameter of a structure in a patient's tissue to be treated;

inputting a laser-pulse duration into an input of a tissue treatment device, with the pulse duration that is input being selected in response to the determined diameter of the structure to be treated, the selecting being performed so treatment of a structure having smaller diameter results in a shorter pulse duration than treatment of a structure having a larger diameter; and

applying laser energy to a treatment area of the patient's tissue, with the tissue treatment device, to cause thermal injury to the structure.

It is respectfully submitted that there appears to be no discussion in 10/4/04 Office Action which suggests that 'the 844 patent contains teaching regarding the method recited by claim 23. For example, there appears to be no discussion in the Office Action regarding determining a diameter of a structure to be treated, and then selecting pulse widths based on the determined

diameter. Further, based on a review of the '844 patent, the '844 Patent does not appear to contain any teaching suggesting the method as recited by the above elements of claim 23. Thus, it is respectfully submitted that claim 23, and its dependent claims, are patentable over the '844 patent.

### Pending Independent Claim 33

Pending independent claim 33 recites a device having:

- a body having a skin-contacting end;
- a skin-cooling element carried by the body and having a cooling surface at the skin-contacting end;
- a radiation source carried by the body and positioned to transmit tissue damaging radiation to a patient's skin;
- a lens system carried by the body, and positioned between the light radiation source and the patient's skin, such that the tissue damaging radiation is transmitted through the lens system, prior to being incident on the patient's skin, wherein a focal length of the lens system can be varied, whereby a size of a treatment area is varied by changing the focal length.

It is respectfully submitted that there appears to be no discussion in 10/4/04 Office Action which suggests that 'the 844 patent contains teaching regarding the device recited by claim 33. For example, there appears to be no discussion in the Office Action regarding a lens system carried by a body wherein a focal length of the lens system can be varied to vary a size of a treatment area by changing the focal length. Further, based on a review of the '844 patent there does not appear to be any teaching suggesting a device as recited by the above elements of claim 33. Thus, it is respectfully submitted that claim 33, and its dependent claims, are patentable over the '844 patent.

### Pending Independent Claim 41

Pending independent claim 41 recites a device having:

- a body having a skin-contacting end;
- a skin-cooling element carried by the body and having a cooling surface at the skin-contacting end;
- a radiation source carried by the body and having a recessed window through which tissue treating radiation passes to a patient's skin;
- said recessed window being laterally offset from the cooling surface;
- said recessed window being spaced apart from the cooling surface in a direction away from the patient's skin when the cooling surface is contacting the patient's skin so to create a gap between the recessed window and the patient's skin; and

an open region between the recessed window and the skin to permit viewing of the patient's skin under the recessed window

The discussion in the 10/4/04 Office Action regarding Fig. 10B of the '844 Patent refers slot 110 of Fig. 10B as being a recessed window. Even if one assumes for sake of discussion that such an interpretation is supportable, it still appears that important elements of claim 41 are missing. For example, claim 41 recites that the recessed window is spaced apart from the cooling surface so that when the cooling surface is in contact with the patient's skin there is a gap between the recessed window and the patient's skin. It appears that in the '844 patent, Fig. 10B, that when a cooling surface is in contact with the skin, the lens itself would also be in contact with the skin. This is because it appears that the lens is the cooling element which is cooled by cooling water. Thus, there would be no gap between the skin and the recessed window. Further, claim 41 also recites that the open region between the recessed window and the skin permits viewing of the skin under the recessed window. In Fig. 10B, it would appear that there is no gap open region which permits viewing of the patient's skin.

Thus, in light of the above it is respectfully submitted that the device of claim 41 is not shown or suggested by the '844 patent. Therefore, it is further respectfully submitted that claim 41 and its dependent claims are patentable over the '844 patent.

#### Pending Independent Claim 56

Independent claim 56 and dependent claim 57-60 have been added to the present case, as shown in the above listing of claims. Newly added claim 56 recites in part a device having:

- a body having a skin-contacting end;
- a skin-cooling element carried by the body and having a cooling surface at the skin-contacting end;
- the body having a recessed window through which tissue treating radiation passes to a patient's skin; and
- said recessed window being laterally offset from the cooling surface;
- said recessed window being spaced apart from the cooling surface in a direction away from the patient's skin when the cooling surface is contacting the patient's skin, such that an open region is created between the recessed window and an area of an area of the patient's skin, and the open area provides a view port.

It is respectfully submitted that the above elements of claim 56, provide for a device which is not disclosed or suggested by the '844 patent. For example, claim 56 recites a recessed window positioned, so that when the cooling surface is in contact with the skin, there is an open

region between the recessed window and an area of the patient's skin, wherein the open area provides a view port. Thus, it is respectfully submitted that claim 56 and its dependent claims are patentable over the '844 patent.

**Conclusion**

For the reasons set forth above, it is believed that all claims present in this application are patentably distinguished over the references, and in condition for allowance. Therefore, reconsideration is requested, and it is requested that this application be passed to allowance.

Respectfully submitted,

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